United Nations

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/942
24 November 1999

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 942

Case No. 1019: MERANI

Against: The United Nations Joint Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Mayer Gabay, Vice-President; Ms. Marsha A. Echols;

Whereas, at the request of Neelam S. Merani, the recipient of a retirement benefit paid by the United Nations Joint Staff Pension Fund (hereinafter referred to as UNJSPF or the Fund), the President of the Tribunal, with the agreement of the Respondent, extended until 30 April 1998, the time-limit for the filing of an application with the Tribunal;

Whereas, on 18 March 1998, the Applicant filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 21 April 1998, the Applicant, after making the necessary corrections, again filed an application requesting the Tribunal:

> "1. To rescind the decision adopted by the Standing Committee of the United Nations Joint Staff Pension Board, at its 180th session, on 2 July 1997 (...), endorsing the refusal of the Secretary of the United Nations Joint Staff Pension Fund to apply to the Applicant's deferred retirement benefit the cost-of-living differential factor provided for in paragraphs 5 and 6 of the Pension Adjustment System.
>
> 2. To order the Fund to recalculate the Applicant's deferred retirement benefit as of 1 January 1996, on the basis of the two-track adjustment system as provided for in

the Pension Adjustment System, including the application of the cost-of-living differential factor.

3. To order the Fund to pay to the Applicant the benefit so recalculated, with retroactive effect to 1 January 1996.

4. To order the Fund to pay to the Applicant interest, at the rate decided by the Tribunal, on the difference between the amounts so recalculated and the sums actually paid, between the date on which each payment became due and the date of the payment of the difference.

5. To order the Fund to pay to the Applicant such amount as the Tribunal may find appropriate for the costs incurred by him in the preparation and the submission of the present application."

Whereas the Respondent filed his answer on 3 December 1998;

Whereas the Applicant filed written observations on 18 February 1999;

Whereas the Respondent submitted written comments on the Applicant's written observations on 12 April 1999;

Whereas the Applicant submitted additional written observations in response to the Respondent's written comments on 19 April 1999;

Whereas, on 3 August 1999, the Tribunal decided to adjourn consideration of the case to its next session and informed the parties of its decision to hold oral proceedings in the case, pursuant to article 17 of the Rules of the Tribunal, and in addition put questions to the parties;

Whereas, on 28 September 1999, the parties submitted their separate responses to the questions put to them by the Tribunal;

Whereas, on 13 October 1999, the Respondent submitted written comments on the Applicant's response of 28 September 1999;

Whereas, on 17 October 1999, the Applicant submitted written comments on the Respondent's submission of 28 September 1999;

Whereas, on 28 October 1999, the Tribunal heard the parties at a public hearing;

Whereas the facts in the case are as follows:

The Applicant, born 31 December 1940, was employed by the International Maritime Organization in1964 and transferred to the United Nations on 8 January 1973. He separated from service with the United Nations on 26 August 1993. As a participant in the Fund, the Applicant requested, on 30 October 1995, that he commence receiving payment of his deferred retirement benefit as from 1 January 1996, i.e., after reaching age 55.

On 8 February 1994, the Chief, UNJSPF Office, Geneva, sent the Applicant an estimate of his UNJSPF pension entitlement, and explained as follows:

> "Following your separation on 23 August 1993, having less than 55 years of age, you became entitled to a deferred pension. In accordance with paragraph 27 of the Pension adjustment system (...) the local currency base amount will be established by applying to the adjusted (CPI adjustment applicable commencing at age 55) dollar amount the average exchange rate over the 36 consecutive months up to and including the month of first payment. Please note that the cost-of-living differential factor does not apply to deferred retirement benefit. For information, the 36-month average exchange rate applicable for deferred periodic pensions commencing now is 1.44 SF per US dollar."

On 11 July 1995, the Applicant gave instructions to the Chief, UNJSPF, Geneva Office, for the payment of his "full deferred retirement benefit (pension), [to be] paid in Swiss francs, at age 55, at the appropriate reduced rate."

On 26 October 1995, the Secretary, UNJSPF, requested the Applicant to contact the Fund one month before the intended date of commencement of his benefits to arrange for payment. He further stated, "Your benefit will be subject to cost-of-living adjustment in accordance with the Pension Adjustment System."

On 26 November 1995, the Applicant wrote to the Secretary, UNJSPF, noting in the third paragraph, in part, as follows:

> "... In your letter you state that my benefit will be subject to cost-of-living adjustment in accordance to the Pension Adjustment System. I understand this as indicating that my initial benefit will be adjusted to reflect the cost-of-living

including any differential between Geneva and New York as the base of the system. I would appreciate urgent confirmation of this ..."

On 8 January 1996, the Applicant furnished proof of his residence in Switzerland.

On 12 February 1996, the Secretary, UNJSPF, informed the Applicant that his first payment was being remitted. On 6 March 1996, the Applicant asked the Secretary, UNJSPF, to provide him with a detailed statement of how the local currency track was calculated in his case. He also referred to the third paragraph of his letter of 26 November 1995 and restated his request for an answer to the question raised in that paragraph. He forwarded a copy of the 6 March 1996 letter on that same day to the Geneva Office of the Fund, and asked what rate of exchange and initial adjustment applied to the Swiss local track on 1 January 1996. On 1 April 1996, the Administrative Officer, UNJSPF, Geneva Office, replied that the Applicant's benefit "was established at your request on the Swiss local track, in accordance with the Pension Adjustment System (...), applied to deferred retirement benefits." Paragraph 27 of the pension adjustment system, reads as follows:

"27. (a) For participants whose date of separation was before 31 December 1989, no adjustment will be applied to deferred retirement benefits prior to the beneficiary's reaching age 50. Commencing at age 50 or the date of separation, if later, the base dollar pension under subparagraph 5 (a) above is adjusted by the United States consumer price index in accordance with section H above without retroactive effect. The two-track adjustment system becomes operative on the date of commencement of the payment of the periodic benefit. At that time a local currency base amount is established by applying to the adjusted dollar amount the average exchange rate over the 36 consecutive months up to and including the month of first payment.

(b) For participants separating from service on or after 31 December 1989, no adjustment will be applied to deferred retirement benefits prior to the beneficiary's reaching age 55. Commencing at age 55 or the date of separation, if later, the adjustment procedures set out in (a) above will be applied to the deferred retirement benefits."

On 9 May 1996, the Secretary, UNJSPF, explained to the Applicant:

"... [T]he amount of your deferred retirement benefit was established by using your US dollar basic benefit of US$ 4,476.09 multiplied by 1.34 which was the 36-month average exchange rate, at the date of the commencement of your benefit, of your country of residence, Switzerland.

The initial local currency track amount of SF 5, 997.96 was payable beginning 1 January 1996 the day after your 55th birthday. Please note that effective 1 April 1996, your pension benefit will be paid at the rate of SF 6,201.90 at the end of each month. This reflects a 3.4% cost-of-living adjustment for Switzerland.

..."

On 12 May 1996, the Applicant wrote to the Secretary, UNJSPF, stating, *inter alia*, as follows:

"...

If the information given to me unofficially that the cost-of-living differential factor was not applied to my entitlement is correct, I submit that this is not in accordance with the pension adjustment system. Under paragraph 4 of the system, 'except as otherwise noted, the pension adjustment system applied to ... deferred retirement ... periodic benefits'. There are several provisions in the pension adjustment system which exclude the deferred retirement benefits from their application. This is the case of special adjustment for small pension[s] provided for in Section E; this adjustment is specifically excluded in the case of deferred retirement benefits under paragraph 10. Similarly, under paragraph 36 (a) and (b), deferred retirement benefits are specifically excluded from the interim and transitional measures specified in paragraph 35. There is, however, no provision in the pension adjustment system which would exclude deferred retirement benefits from the application of the cost-of-living differential factor under paragraph 5 (b).

I am naturally aware of the fact that the cost-of-living differential factor is not mentioned in Section J which deals with deferred retirement benefits. This, however, does not mean that this factor does not apply to these benefits. In view of the unequivocal wording of paragraphs 4 and 5 (b), only an express provision ... could exclude the deferred retirement benefits from the scope of application of the cost-of-living differential factor.

> I am therefore requesting you to review the method by which the local currency amount of my pension was established as of 1 January 1996, by applying to the dollar base amount the cost-of-living differential factor, as applicable in Switzerland on that date, and converting the resulting amount into local currency amount by applying to it the average exchange rate over the preceding 36 months.
>
> ..."

On 7 June 1996, the Applicant again requested the Secretary, UNJSPF, to review the method of calculating his deferred retirement benefit. On 12 December 1996, the Applicant requested an acknowledgement of his prior requests for review. On 10 February 1997, the Secretary, UNJSPF, confirmed to the Applicant that his case would be placed before the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) at its June/July 1997 meeting and asked whether the Applicant wished to submit any additional documentation. On 21 April 1997, the Applicant confirmed that he considered the documentation already submitted to be complete.

On 2 July 1997, the Standing Committee of the UNJSPB adopted its decision, which reads, in part, as follows:

> "145. The Standing Committee noted the terms of paragraph 27 of the Pension Adjustment System. While paragraph 4 of the Pension Adjustment System provided generally that 'except as otherwise indicated, the Pension Adjustment System applies to retirement, early retirement, deferred retirement ... benefits,' paragraph 27, entitled 'Deferred retirement benefits', established a specific and *sui generis* calculation system for the determination of the initial local-currency track amount of a deferred retirement benefit, which has been applied by the Fund consistently and without challenge since 1983.
>
> 146. The Washington Formula, of which the COLD [cost-of-living differential] factor is an integral part, was designed to protect income replacement as measured against the last years of salary before retirement; this element was absent with respect to deferred retirement benefits that may become payable only years after separation. Furthermore, to calculate COLD factors with respect to deferred retirement benefits would pose difficult questions as to whether the date of separation or the date of commencement of benefit would be the applicable date, and if the latter, would

permit a beneficiary to choose a commencement date selected with a particularly high COLD factor being applicable, an option that recipients of retirement, early retirement or disability benefits do not have. In addition, all references to the determination of the COLD factors in paragraphs 5 and 6 of the UNJSPF Pension Adjustment System were based on the 36 months *up to and including the month of separation* and to the post adjustment relativities corresponding to those months. In the case of deferred benefits, paragraph 27 of the pension adjustment system clearly calls for using the average of 36 months of exchange rates *up to and including the month of the first payment*. To apply COLD factors based on the separation date for the Applicant would be inconsistent with paragraph 27; moreover, to calculate the COLD factor by reference to the post adjustment relativities up to the date of payment would be inconsistent with paragraphs 5 and 6 of the pension adjustment system. It was noted that, therefore, acceptance of the claim of the Applicant would give rise to serious problems as regards application of the two-track adjustment system.

147. Some speakers stressed that paragraph 4 of the UNJSPF Pension Adjustment System stated explicitly that 'except as otherwise noted,' the pension adjustment system applied equally to retirement, early retirement and deferred retirement benefits. They maintained that, as paragraphs 5 and 6 of the adjustment system dealing with the COLD factor did not explicitly exclude their applicability to deferred retirement benefits, those provisions necessarily applied also to deferred pensions. In their view, the Secretary's interpretation of the provisions of the pension adjustment system in this case was contrary to their text, as approved by the General Assembly. For that reason these speakers were in favour of accepting the claim made by the Applicant.

148. By a vote of ten to four, the Standing Committee upheld the Secretary's application of the Fund's two-track adjustment system with respect to the calculation of the initial local-currency amount for deferred retirement benefits, i.e., that the COLD factor did not apply in the calculation of the initial local-currency amount of deferred retirement benefits. It was noted that this action represented confirmation of a long-established interpretation and practice by the Fund secretariat."

In a letter dated 14 July 1997, the Secretary, UNJSPF, informed the Applicant as follows:

"I refer to your previous correspondence with the Pension Fund secretariat and to your request for a review by the Standing Committee of the United Nations Joint

Staff Pension Board of my decision concerning the non-application of the COLD factor in the calculation of the initial local-currency track amount of your deferred retirement benefit.

At its meeting held on 2 July 1997, the Standing Committee noted the terms of paragraphs 4 and 27 of the UNJSPF Pension Adjustment System, as adopted by the United Nations General Assembly. While paragraph 4 of the Pension Adjustment System provided generally that 'except as otherwise indicated, the Pension Adjustment System applied to retirement, early retirement, deferred retirement ... benefits,' paragraph 27, entitled 'Deferred retirement benefits', established a specific and *sui generis* calculation system for the determination of the initial local-currency track amount of a deferred retirement benefit, a system which has been applied by the Fund consistently and without challenge since 1983.

...

Based on the foregoing considerations, the Standing Committee decided to uphold the Secretary's application of the Fund's two-track adjustment system with respect to the calculation of the initial local-currency amount of your deferred retirement benefit, i.e., that the COLD factor did not apply in the calculation of the initial local-currency amount of your deferred retirement benefit. It was noted that this action by the Standing Committee represented confirmation of a long-established interpretation and practice by the Fund secretariat.

..."

On 21 April 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The initial adjustment based on the COLD factor, set forth in paragraphs 5 and 6 of the pensions adjustment system, should have been applied to the calculation of the Applicant's deferred retirement benefits paid to the Applicant as from 1 January 1996.

2. The Respondent fails to proffer evidence that the General Assembly did not intend the COLD formula to apply to deferred retirement benefits.

Whereas the Respondent's principal contentions are:

1. The COLD factor was never intended to apply to deferred retirement benefits and thus is irrelevant to the calculation of the Applicant's benefits.

2. Paragraph 27 of the pension adjustment system is a *sui generis* system for calculating deferred retirement benefits. Its language excludes the application of the COLD factor under the rule *generalia specialibus non derogant*.

3. It would be administratively impossible to apply the COLD factor (calculated under paragraph 5 as of the date of separation) to deferred benefits, which are calculated on the date of payment under paragraph 27.

4. Applying the COLD factor to recipients of deferred retirement benefits would be inconsistent with the purpose of the formula. It would also result in Fund participants being able to choose a commencement date based on a particularly high COLD factor, thus providing them with an option not available to recipients of UNJSPF retirement, early retirement or disability benefits.

The Tribunal, having deliberated in Geneva on 21 July 1999, and in New York from 2 to 24 November 1999, now pronounces the following judgement:

I. This dispute requires the Tribunal to interpret the provisions of the pension adjustment system and to determine whether they provide parallel adjustments to those who take immediately and those who defer their retirement benefits. Specifically, the Tribunal must decide whether the COLD factor applies to the deferred retirement benefits of professionals. The parties presented opposing interpretations and answers. While the text of the pension adjustment system contains language from which an answer may be implied, it does not directly and unequivocally answer the question.

Consequently, the Tribunal must construe the relevant paragraphs of the pension adjustment system, considering the text of the pension adjustment system as a whole. The Tribunal stated its rule of interpretation in Judgement No. 656, *Kremer and Gourdon* (1994): "An important principle of interpretation is that construction is to be made of the text as a whole, and not of one section alone. That is, the meaning of a section may be affected by other individual sections in the same text. Therefore, [the] ... rule ... should be construed with reference to the context and with reference to other provisions ... In other words, these provisions should be read together and not in isolation in order to obtain their proper construction."

II. The relevant provisions are paragraphs 1 through 6, 17 and 27 of the 1992 edition of the pension adjustment system. Paragraph 1 states what may be called a general principle. "Pension adjustment is intended to ensure that ... a periodic benefit payable by the [Fund] never falls below the 'real' value of its United States dollar amount and to preserve its purchasing power as initially established in the currency of the recipient's country of residence." Paragraph 4 contains another guiding principle, as well as the introductory phrase that gives rise to the conflicting interpretations. *"Except as otherwise* noted, the pension adjustment system applies to ... deferred retirement ..." (emphasis added). The Respondent argues that the rules for deferred benefits are "otherwise noted" in paragraph 27, which is a specialized provision that governs more general provisions under the rule *generalia specialibus non derogant.*

The Tribunal first notes that, like all exceptions, the quoted language should be narrowly construed. Moreover, as explained below, the Tribunal finds that paragraph 27 addresses very limited aspects of deferred benefits, specifically dates for certain calculations, without changing the basic benefits. With regard to those calculations, paragraph 27 prevails over more general or conflicting provisions.

III. Paragraph 27 is contained in Section J of the pension adjustment system and is entitled "Deferred retirement benefit". It contains only subparagraphs (a) and (b). The relevant text is in the last two sentences of subparagraph (a). "The two-track adjustment system becomes operative on the date of commencement of the payment of the periodic benefit. At that time a local currency base amount is established by applying to the adjusted dollar amount the average exchange rate over the 36 consecutive months up to and including the month of first payment." This language requires the Tribunal to define "two-track adjustment system" and "local currency base amount" initially.

The pension adjustment system do not define the two-track adjustment system. The Respondent explained that beginning in January 1979 a unified two-track pension adjustment system went into effect, which now gives to a beneficiary the option of receiving benefits in either United States dollars adjusted by the United States consumer price index (CPI) or in local currency adjusted by the local CPI. The pension adjustment system record keeping follows this scheme and confirms the Respondent's explanation. Under paragraph 3 of the pension adjustment system, the pension adjustment system maintains records of two amounts for a beneficiary: the United States dollar amount that is adjusted periodically and the local currency amount, if applicable, that is also adjusted periodically.

IV. The Tribunal finds that the first quoted sentence from paragraph 27, read in conjunction with the phrase "[e]xcept as otherwise noted" in paragraph 4, establishes a special date for the commencement of this two-track system when benefits are deferred. Instead of beginning this dual record keeping on the date of separation as happens with regular retirees, for deferred beneficiaries this record keeping begins on the date of payment.

Paragraph 17, which is contained in Section H entitled "Subsequent adjustments of the benefit", confirms this interpretation: "As stated in Section A above [paragraphs 1 through 3], each beneficiary's record contains a United States dollar amount and, if applicable, an amount in the currency of his or her country of residence. These amounts, having first been

determined in accordance with Sections C [Determination of base amounts], D [Cost-of-living differential factors] and E [Special adjustment for small pensions] above, are subsequently adjusted on an annual basis ..."

V. The second quoted sentence from paragraph 27 concerns the *establishment* of the local currency base amount, while paragraph 5 (b) concerns the *calculation* of the local currency base amount. Both the Applicant and the Respondent said that, whatever the exception created by this sentence, it does not introduce a new local currency base in concept. According to them the sentence merely establishes a different method for making the conversion from United States dollars to local currency. The Tribunal accepts that both paragraphs refer to the same local currency base amount and that the word "established" is limited to this conversion. As in paragraph IV above, the exception "noted" is a difference in dates. For those who defer benefits the conversion involves a dollar amount multiplied by the average exchange rate for a stated period through the month of first payment, instead of the month of separation.

VI. Consequently, to understand this sentence in paragraph 27 (a) it is necessary to refer to paragraph 5 (b), which concerns the local currency base amount. The latter paragraph defines a process of calculation involving three steps. The first step is to establish a cost-of-living differential for the country of residence and the month of separation. The second is to establish a notional dollar base amount on the basis of the final average remuneration allowable. The third step is to derive the local currency amount by applying an average exchange rate to the notional dollar base amount.

VII. Paragraph 27 (a) incorporates this local currency base amount but also refers to a calculation. The local currency base amount is "established by applying to the adjusted dollar

amount" the currency conversion formula. The words "adjusted dollar amount" are undefined. In interpreting the text we will give words their "natural and ordinary meaning". (Cf. Judgement No. 852, *Balogun*, (1977)). This follows general international practice, which refers to interpretation according to the "ordinary meaning" of the terms "in their context and in the light of [their] object and purpose" unless the parties intended to give the word a special meaning. *(Vienna Convention on the Law of Treaties*, Articles 31.1 & 31.4).

The Respondent argues that the use of the term "adjusted dollar amount", rather than the term "notional dollar base amount" as employed in paragraph 5 (b), is proof that the exception in paragraph 27 excludes the whole paragraph 5 (b) calculation from the deferred benefits system. If we accepted this interpretation, it would exclude the COLD factor from the Applicant's deferred benefit calculations.

VIII. The "dollar amount" in paragraph 27 (a) must be that referred to in paragraphs 1, 2 and 17, all of which refer to the "United States dollar amount". Further, paragraph 3 (a) notes that records are maintained in two "amounts, one of which is in "United States dollars". These are clear references to dollar amount, as opposed to the "dollar base amount" of paragraph 5 (a).

IX. Paragraph 27 (a) speaks of a dollar amount that is "adjusted" before the currency conversion occurs, as mentioned in paragraph 17 (a). To resolve the question of interpretation we must consider first the natural and ordinary meaning of the word. There are several adjustments mentioned in the pension adjustment system, but most are adjustments to the dollar base amount. Paragraph 17, in contrast, mentions adjustments to both the United States dollar amount and an amount of the currency of the beneficiary's country of residence: "These amounts, having first been determined in accordance with Sections C, D and E above, are subsequently adjusted on an annual basis ... (a) The dollar amount is adjusted by the ... United States CPI ..." This is the only pre-payment adjustment used by the Respondent.

Using this base, and giving a special meaning to local currency base amount, the Respondent is thus able to argue that paragraph 27 excludes the application of the COLD factor and denies a benefit to those who defer the payment of their retirement benefits.

X. Another interpretation of paragraph 27 seems more reasonable to the Tribunal. It focuses on the difference in dates (separation versus payment) mentioned previously. The relevant sentence in paragraph 27 (a) starts with the notion of a "local currency base amount", the exact wording of paragraph 5 (b). Thus, this notion carries over to paragraph 27, along with the three-step process described above. However, paragraph 5 (b) was written to apply to retirees whose benefits begin on separation. Consequently, the "notional dollar base amount" is established on the basis of the final average remuneration adjusted by the US CPI on the date of separation. In contrast, when benefits are deferred, the adjustments to the United States dollar amount continue from the date the beneficiary reaches the age of 50 or the date of separation, if later, until the date of payment. The reference point is not the "notional dollar base amount" (adjusted by the United States CPI until the date of separation) but is the "adjusted dollar amount" (adjusted by the United States CPI until the date of payment). This interpretation is supported by language in paragraph 17 which states, "*each* beneficiary's record contains ..., if applicable, an amount in [local] currency ... determined in accordance with Sections C, D [cost-of-living differential factors] and E ..." (emphasis added).

XI. Finally, the Tribunal may also refer to preparatory work and the circumstances surrounding the conclusion of the text. Article 32 of the Vienna Convention on the Law of Treaties provides for recourse to supplementary means of interpretation to confirm the ordinary meaning of the text or to determine the meaning when the usual route leaves the meaning "ambiguous or obscure" or leads to a "manifestly absurd or unreasonable result." While the pension adjustment system is not a treaty, the Tribunal recognizes that the Vienna

Convention is a statement of generally accepted rules for interpreting international documents.

The interpretation chosen by the Tribunal maintains parallel benefits for all retirees who reside outside the United States. There is no clear and unequivocal indication in the record before the Tribunal, including the preparatory work and the circumstances surrounding the 1983 amendments to the pension adjustment system, that the General Assembly intended to change the pension adjustment system to discriminate against those who defer their benefits, had a reason for treating them differently or was clearly presented with the option of doing so. The parenthetical cross-reference in paragraph 4 of Annex IX of General Assembly resolution 37/131 to paragraph 24 (the current paragraph 27 of the pension adjustment system) "Except as otherwise noted (see paras. ... 24 below)" is insufficient to indicate that the General Assembly intended to change a basic feature of the pension adjustment system, especially in the absence of the usual careful and thorough background explanations.

The Tribunal of course can consider practice, when appropriate, as was done in *Balogun*. Similarly, the International Court of Justice considered the practice of the United Nations and of the Specialized Agencies regarding holders of fixed-term contracts in its Advisory Opinion of 23 October 1956 (*Judgements of the Administrative Tribunal of the I.L.O. upon complaints made against the U.N.E.S.C.O.).* It is customary in international statutory interpretation to do so. Article 31.1 (b) of the Vienna Convention on the Law of Treaties provides that "[t]here shall be taken into account, together with the context: ... any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation ..." However, the Tribunal finds that the practice of the Respondent in excluding the COLD factor is not representative of the intention of the General Assembly. Practice should be followed only if it is not contrary to an international document. The practice of the Respondent is contrary to what we find to be the meaning and scheme of the pension adjustment system.

In its resolution 35/215, the General Assembly, in discussing the recommendations that took effect on 1 January 1981, noted that the recommended universal pension system was to be supplemented by a "selective system which would provide for the application of cost-of-living differential factors to the final average remuneration for purposes of computing the local currency track pension when a participant retired in a country where the cost of living was substantially higher than at the base of the post adjustment system (currently New York). ... The system of cost-of-living differential factors would be incorporated into the pension adjustment system ..."

The interpretation selected by the Tribunal respects what it believes are the three main objectives of the pension adjustment system. The first objective is protecting pensions against *inflation.* The CPI adjustments to the United States dollar base and to the local currency amount accomplish this objective. The second is taking into account the *cost-of-living differential* for those residing outside the United States. The COLD factor accomplishes this goal. The third is *converting the* United States dollar *pension* amount *into local currency*, when the retiree choose to be paid in local currency. The currency conversion accomplishes this third aim.

XII. The Respondent argues that the conflict in dates is proof that paragraph 27 excludes the COLD factor and that any interpretation other than his reading of paragraph 27 would be impossible to implement because of the conflicting dates. The Tribunal recognizes this conflict in dates but does not find it a ground for denying benefits that the rules provide. In this case the manner of the implementation of the pension adjustment system, given the conflicting dates, is not within the province of this Tribunal, which has power to interpret but not to legislate. The Tribunal in the past has explained the boundaries of its responsibilities with regard to the complexities of the pension adjustment system. (Cf. Judgements No. 546, *Christy et al.* (1991); No. 514, *Maneck* (1991), and No. 589, *Shousa* (1993).

XIII. The final consideration presented, although not expressly addressed, is the posible financial impact of the Tribunal's interpretation on the UNJSPF. This consideration cannot affect the Tribunal's decision regarding the correct interpretation of the pension adjustment system. However, with regard to existing beneficiaries under the deferred benefit system, the Tribunal believes that the statute of limitations has run on similar applications.

XIV. For the foregoing reasons, the Tribunal:

(a) Decides that the COLD factor is applicable to the deferred retirement benefits of the Applicant, retroactive to the date of first payment; and

(b) Rejects all other claims.

(Signatures)

Hubert THIERRY
President

Mayer GABAY
Member

Marsha A. ECHOLS
Member

New York, 24 November 1999

Maritza STRUYVENBERG
Executive Secretary